

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED
NOV 13 2007
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MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY (f/k/a FIRST
COLONY LIFE INSURANCE COMPANY),

Plaintiff,

vs.

DOROTHY CIURA and
LISA VANDENBERGHE (n/k/a LISA ORTEGA)

Defendants.

No. **07 C 6400**

MAGISTRATE JUDGE MASON

JUDGE DER-YEGHIAYAN

**GENWORTH LIFE AND ANNUITY INSURANCE COMPANY'S
MOTION FOR RESTRAINING ORDER**

Genworth Life and Annuity Insurance Company (f/k/a First Colony Life Insurance Company) ("GLAIC") by its attorneys, William A. Chittenden, III and Stuart F. Primack and Chittenden, Murday & Novotny LLC for its Motion for Restraining Order pursuant to 28 U.S.C. § 2361, states as follows:

1. Contemporaneous with the filing of this Motion, GLAIC filed its Complaint for Interpleader pursuant to 28 U.S.C. §§ 1335, 1397, and 2361 (2007) to resolve competing claims to life insurance proceeds payable under Policy No. 2100851 ("Policy") issued by GLAIC, which insured the life of Steven Ciura.
2. Contemporaneous with the filing of this Motion, GLAIC also filed its Motion for Leave to Deposit its Admitted Liability seeking to deposit its admitted liability under the Policy in the amount of \$50,000, plus accrued interest.
3. GLAIC now moves this Court to enter an ex parte restraining order as provided for by 28 U.S.C. §2361, which states, in relevant part, as follows:

In any civil action of interpleader or in the nature of interpleader under section 1335 of this title, a district court may issue its process for all claimants and enter its order restraining them from instituting or prosecuting any proceeding in any State or United States court affecting the property, instrument or obligation involved in the interpleader action until further order of the court.

28 U.S.C. § 2361 (2007).

4. The restraining order provided for by 28 U.S.C. §2361 is excepted from the requirements of Rule 65(b) of the Federal Rules of Civil Procedure by Rule 65(e) which provides, in relevant part, as follows: "These rules do not modify . . . the provisions of Title 28 U.S.C. §2361, relating to preliminary injunctions in actions of interpleader or in the nature of interpleader." F.R.C.P. 65(e). FED R. CIV. P. 65(b).

5. Accordingly, this Court has the power to temporarily enjoin other actions seeking a determination of the rights being contested, without further notice or hearing.

6. In a case filed in Illinois state court titled "Dorothy Ciura v. First Colony Life Insurance Company and Lisa Vandenberghe," Case No. 2006CH000764 (Circuit Court of the Eighteenth Judicial Circuit, DuPage County Illinois), Defendant Dorothy Ciura is seeking a determination of her rights in the proceeds of the Policy ("State Court Proceeding").

7. The issuance of an injunction will ensure that the rights of all claimants are determined in one proceeding and is desirable to ensure the effectiveness of the interpleader remedy.

WHEREFORE, Genworth Life and Annuity Insurance Company (d/b/a First Colony Life Insurance Company) respectfully requests that this Court grant its Motion for Restraining Order, in the form of the draft Order submitted herewith as Exhibit 1.

Respectfully submitted,

GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY (F/K/A FIRST
COLONY LIFE INSURANCE COMPANY)

By: 

One of its Attorneys

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IN THE UNITED STATES DISTRICT COURT
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GENWORTH LIFE AND ANNUITY
INSURANCE COMPANY (f/k/a FIRST
COLONY LIFE INSURANCE COMPANY),

Plaintiff,

vs.

DOROTHY CIURA and
LISA VANDENBERGHE (n/k/a LISA ORTEGA)

Defendants.

No.:

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED

(1) Dorothy Ciura is restrained and enjoined from continuing the litigation titled "Dorothy Ciura v. First Colony Life Insurance Company and Lisa Vandenberghe" Case No. 2006CH000764, presently proceeding in the Circuit Court of the Eighteenth Judicial Circuit, DuPage County Illinois, until further order of this Court.

(2) Dorothy Ciura and Lisa Vandenberghe (n/k/a Lisa Ortega), or any person or entity claiming though them, or any of them, are restrained and enjoined from commencing or prosecuting any proceeding against Genworth Life and Annuity Insurance Company (f/k/a First Colony Life Insurance Company) in any state or federal court or other forum with respect to the insurance proceeds payable under the Policy and on account of the death of Steven Ciura.

(3) Leave is hereby granted to serve this Order in the same manner of service as summons and complaint.

DATED: _____

ENTERED: _____
Judge

